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Supreme Court, U.S.
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In The

SUPREME COURT OF THE UNITED STATES

October Term, 1996

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KENNY MOORE

Petitioner,

V.

ARTHUR R. JACOBS

Respondent,

◆

Petition For Writ Of Certiorari To The
Supreme Court Of The State Of Mississippi

◆

PETITION FOR WRIT OF CERTIORARI

◆

Kenny Moore
1110 Moore Street
Columbia, MS 39429
(601) 736-3694

In propria persona

21 pp

QUESTIONS PRESENTED

1. This Court should grant the Petition to resolve the Federal question whether the State of Mississippi Court failed to secure, protect and uphold this Petitioner's Constructional Right To Due Process of Law and Equal Protection Of The Laws.

2. This Court should grant the Petition to resolve the Federal question of the conflict with applicable decisions of this Court, as to call for an exercise of the Court's power of supervision.

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OPINIONS BELOW

The unpublished written decision of the Supreme Court of Mississippi appears in Appendix Page 1 of this Petition.

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JURISDICTION

Jurisdiction is conferred upon the United States Supreme Court pursuant to the USA Constitution Article III § 2; Rules of the Supreme Court Of The United States Rule 10.1 (b)(c).

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CONSTITUTIONAL PROVISIONS

USA Constitution Article V

";nor be deprived of life,liberty, or property, without due process of law;"

USA Constitution Article XIV

",nor deny to any person within its jurisdiction the equal protection of the laws."

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STATEMENT OF THE CASE

Petitioner, KENNY MOORE, individually, respectfully request that a Writ of Certiorari issue to review the decision of the Supreme Court Of The State Of Mississippi wherein the said Court denied a Petition for Writ of Certiorari from the Court Of Appeals Of The State Of Mississippi affirming the judgment of the Marion County Circuit Court Of The State Of Mississippi, see Appendix pages 1 through 6.

1. This Court should grant the Petition to resolve the Federal question whether the State Of Mississippi Court failed to secure, protect and uphold this Petitioner's Constitutional Right of Due Process of law and equal protection of the laws.

This action arises from a lawsuit filed into a State Court by the respondent herein alleging negligence, personal bodily injury and seeking damages and medical expenses plus costs, attorney's fees and all other cost associated with the said lawsuit.

On the Trial of this matter in the State Court the Plaintiff by and through Counsel failed to put on sufficient proof

as no expert witness, no medical doctor, technician or etc, was deposed or testified during the usual course of the said trial, nor were any affidavits entered or proffered into the record of this case or put on the record of the trial. No proof was offered by any medical expert as to pain and/or suffering or causation thereof, nor was the keeper of the alleged Medical Records called as a witness to testify as to any offers of proof, nor were any records introduced by proper laying of foundation by a qualified expert witness.

The prerequisite of mandatory expert witness testimony was not complied with in this case.

A reasonable jury could not, absent mandatory expert witness testimony, have found for the Plaintiff any award of damages, attorney fees, cost or other cost involved in the suit without or excluding the mandatory expert witness testimony, medical physician, technicians, etc or medical care experts involved in the treatment of Plaintiff's alleged injuries and/or pain and suffering.

The Plaintiff has a long medical history of medical problems with his right

hip, even as a child, he had surgery, has degenerative arthritis, destructive arthropathy and had hip replacement 20 years ago, had fractured the right hip in the past and had it fused.

It was the same right hip joint the Plaintiff alleged to have broken which he alleged was due to negligence of the Defendant Kenny Moore.

The only witness for the Plaintiff was the Plaintiff, he took the witness and testified to an alleged accident and alleged medical reports were handed to him to identify and testify to.

The said Plaintiff does not qualify as an expert witness as to medical nor was he the official keeper of the alleged medical records, thus the said records could not be authenticated.

The Medical evidence could only be produced by a qualified expert medical witness.

Therefore without the mandatory medical expert witness testimony in a negligence suit for damages and compensation for medical bills, etc, a reasonable jury could not have applied the Doctrine of Preponderance of the Evidence or clear and convincing evidence standard in this case,

which constitutes a violation or denial of Due Process of law and equal protection of the laws.

2. This Court should grant the Petition to resolve the Federal question of the conflict with applicable decisions of this Court, as to call for an exercise of the Court's power of Supervision.

The standard of proof in negligence cases seeking damages, medical expenses, attorney fees, cost and any other cost involved in bringing the said suit, is brought through medical expert witness testimony, and that standard is applied to all negligence cases as such herein.

The Trial Court and its agents, the prosecution and defense, all failed to apply this said Standard of Proof, herein lies the violation or denial of Due Process of Law and Equal Protection of the Laws USAC Article V and XIV.

"Due process of Law" within this clause is not equivalent for process of federal courts or for process of any particular state and has reference rather to a standard of process that may cover many varieties of processes that are expressive of different combinations of historical or modern, local or other juridical standard,

provided they do not conflict with fundamental principles of liberty and justice. BUTE v. PEOPLE OF STATE OF ILLINOIS, Ill. 1948, 68 S.Ct. 763,333 U.S. 640, 92 L.Ed. 986.

By *"due process of law"* is meant one which, following the forms of law, is appropriate to the case, and just to the parties to be affected, it must be pursued in the ordinary mode prescribed by the law; it must be adapted to the end to be attained; and where ever it is necessary for the protection of the parties, it must give them an opportunity to be heard respecting the justice of the judgment sought. HAGAR V RECLAMATION NO.108, Cal. 1884, 4 S.Ct. 663, 111 U.S. 701, 28 L.Ed. 569.

Where procedural due process must be afforded because of a liberty or property interest is within protection of this amendment, there must be a determination as to what process is due under particular context. SMITH V ORGANIZATION OF FOSTER FAMILIES FOR EQUALITY AND REFORM, N.Y. 1977, 97 S.Ct. 2094, 431, U.S. 816, 53 L. Ed. 2d 14.

Asserted denial of due process of law is to be asserted by an appraisal of the

totality of facts in a given case. BETTS V BRADY, 1942, 62 S.Ct. 1252, 316, U.S. 455, 86 L.Ed. 1595.

The very nature of due process negates any concept of inflexible procedures universally applicable to every imaginable situation. BOARD OF CURATORS OF UNIVERSITY OF MISSOURI V HOROWITZ, Mo. 1978, 98 S. Ct. 948, 435 U.S. 78, 55 L.Ed 2d 124.

Due process of law guarantees no particular form of procedure; it protects substantial rights. MITCHELL V W.T. GRANT CO., La. 1974, 94 S.Ct. 1895, 416 U.S. 600, 40 L.Ed. 2d 406.

Due process does not require that defendant in every civil case actually have hearing on the merits; it does require an opportunity granted at meaningful time and in meaningful manner for hearing appropriate to the nature of the case. BODDIE V CONNECTICUT, Conn. 1971, 91 S.Ct. 780, 401 U.S. 371, 28 L.Ed 2113.

Right of action by one injured as result of negligence of another against the negligent party to recover damages sustained by reason of such injury is "*property*" within protection of this amendment. MARTINEZ V FOX VALLEY BUS LINES D.C. Ill. 1936, 17 F. Supp. 576.

It is the manifest duty of courts to vindicate guarantees of confrontation, compulsory process and due process clauses and to accomplish that it is essential that all relevant and admissible evidence be produced. U.S. V NIXON Dist. Col. 1974, 94 S.Ct. 3090, 418 U.S. 683, 41 L.Ed. 2d 897.

This United States Supreme Court should exercise its power of supervision to resolve this Federal Constitutional question as the previously cited and quoted case laws are applicable in this Petitioner's case and the State of Mississippi Supreme Court below failed to apply these applicable decisions of this Court.

THE PROCEEDINGS BELOW

Petitioner appealed a Final Order on Judgment on Jury Verdict from the Trial Court the Circuit Court of Marion County, Mississippi which was AFFIRMED by the Court of Appeals of the State of Mississippi, thereafter Petitioner filed a Petition for Writ of Certiorari to The Supreme Court of Mississippi, which was denied.

It is from that denial that this Petiter's Petitions this Court to issue a Writ of Certiorari to the Supreme Court of Mississippi.

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REASONS FOR GRANTING WRIT

This Supreme Court should grant this Petition for the following reasons, to wit:

(1) As this Petitioner has recognized liberty or property interest at stake;

(2) And that even temporary deprivation of the liberty or property will satisfy required elements of due process clause;

(3) As there has been some form of state action which deprives individual, this Petitioner, of his liberty or property;

(4) To secure and protect Petitioners' Federally secured right to Due Process of Law and to Equal Protection of the Laws.

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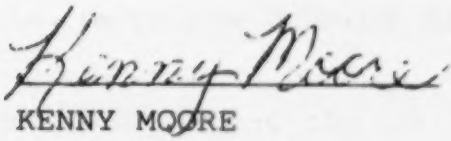
CONCLUSION

For the foregoing reasons, the Petitioner respectfully request this Honorable Court to grant this Petition.

Date: November 4, 1996

RESPECTFULLY SUBMITTED
WITHOUT PREJUDICE,



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FINAL ORDER - Judgment on Jury Verdict The Circuit Court of Marion County, Mississippi the 16th day of July, 1993 .App 5 - 6

IN THE SUPREME COURT OF MISSISSIPPI

NO. 94-CT-00008-SCT

KENNY MORE, INDIVIDUALLY, D/B/A MOORE'S AUTO SERVICE CENTER

v.

AUTHOR R. JACOBS

ORDER

This matter is before the Court on Petition for Writ of Certiorari, filed by Kenny Moore. After Consideration, the Court finds that the petition should be denied.

IT IS THEREFORE ORDERED that the Petition for Writ of Certiorari filed by Kenny Moore be, and hereby is, denied.

SO ORDERED, this, the 30th day of July, 1996.

/s/ Michael Sullivan
MICHAEL SULLIVAN, PRESIDING JUSTICE FOR THE COURT

TO DENY: ALL JUSTICES.

File date: August 8, 1996
Linda Stone, Supreme Court Clerk

IN THE COURT OF APPEALS OF THE
STATE OF MISSISSIPPI

NO. 94-CA-00008-COA

KENNY MOORE, INDIVIDUAL, D/B/A
MOORE'S AUTO SERVICE CENTER Appellant

v.

ARTHUR R. JACOBS Appellee

THIS OPINION IS NOT DESIGNATED FOR
PUBLICATION AND MAY NOT BE CITED,
PURSUANT TO M.R.A.P. 35-B

TRIAL JUDGE	HON. MICHAEL RAY EUBANKS
COURT FROM WHICH APPEALED	MARION COUNTY CIRCUIT COURT
ATTORNEYS FOR APPELLANT	JACK PARSONS REBECCA C. TAYLOR
ATTORNEYS FOR APPELLEE	JAMES A. COOK, JR NANCY STEEN
NATURE OF THE CASE	PERSONAL INJURY
TRIAL COURT DISPOSITION	JUDGMENT FOR APPELLEE

BEFORE THOMAS, P.J., COLEMAN, DIAZ, AND
PAYNE, JJ. DIAZ, J, FOR THE COURT

After trial in Marion County Circuit Court, a jury returned a $30,000 verdict in favor of the Appellee, Arthur R. Jacobs (Jacobs). Feeling aggrieved, Kenny Moore, d/b/a Moore's Auto Service Center, (Moore) appeals to this Court asserting the following issues: (1) there was inadequate proof of damages for pain and suffering and (2) the medical bills introduced were

misleading. Finding no reversible error, we affirm rendered a verdict in favor of Jacobs. Based on the facts and evidence in the record, we do not think that the verdict was unreasonable or outrageous in amount.

When a party introduces bill for examination by the court and testifies that the bills were incurred as a result of the injuries complained of, they become prima facie evidence that the bills were necessary and reasonable *Moody v. RPM Pizza, Inc.*, 659 So. @d 877,885 (Miss.1995), *Jackson v. Brumfield*, 458 So 2d 736,737 (Miss.1984), *see* Miss. Code Ann. § 41-9-119 (Rev.1993). It is then that the opposing party may rebut the necessity and reasonableness of the bills by proper evidence *Moody*, 659 So 2d at 885. The ultimate question is then for the jury to decide. *Id.*

The record indicates that the trial judge allowed the medical bills into evidence with irrelevant portions blacked out. The bills were introduced into evidence for the jury to consider. As stated earlier, the question is then up to the jury to decide whether the bills were necessary and reasonable. This was the

proper procedure as outlined by statute and case law. We will not reverse a jury verdict unless it is against the overwhelming weight of the evidence and credible testimony. *Gifford v. Four-County Elec. Power Ass'n*, 615 So 2d 1166, 1171 (Miss.1992). The jury in this case assessed Jacobs' damages at $30,000 despite contradictory trial testimony. After reviewing the evidence in the record, we do not think such decision was contrary to the greater weight of the evidence. Therefore, we affirm the judgment in favor of Jacobs.

THE JUDGMENT OF THE MARION COUNTY CIRCUIT COURT AWARDING $30,000 TO THE APPELLEE IS AFFIRMED. COSTS OF THIS APPEAL ARE TAXED TO THE APPELLANT. STATUTORY DAMAGES PLUS INTEREST SHALL BE AWARDED.

FRAISER, C.J., BRIDGES AND THOMAS, P.JJ., BARBER, COLEMAN, KING, McMILLIN, PAYNE, AND SOUTHWICK,JJ., CONCUR.

DECIDED FEBRUARY 27, 1996

IN THE CIRCUIT COURT OF
MARION COUNTY, MISSISSIPPI

ARTHUR R. JACOBS — PLAINTIFF

Versus — CAUSE NO.12,355

KENNY MOORE, INDIVIDUALLY d/b/a
MOORE'S AUTO SERVICE CENTER — DEFENDANT

JUDGMENT ON JURY VERDICT

On July 14, 1993, this cause came on for trial before the Court, Honorable Michael R. Eubanks presiding, with the Plaintiff and Defendant appearing in person and by and through counsel and announcing ready for trial; whereupon a jury composed of Janie R. Cochran and eleven other good and lawful electors were duly impaneled and sworn to try the issues joined in the Court and jury having heard all of the evidence and testimony presented by the parties, and the jury having retired at 3:00 p.m. on Wednesday, July 14, 1993, to consider its verdict, and the jury subsequently returning the following verdict into open Court, to-wit:

> "We, the jury, find for the Plaintiff, Arthur R. Jacobs, and assess his damages at $30,000."

Whereupon the said verdict was duly received and filed into open Court as the

verdict of the jury;

IT IS, THEREFORE, ORDERED AND ADJUDGED, that the Plaintiff, Arthur R. Jacobs, have and recover from Kenny Moore, individually, d/b/a Moore's Auto Service Center, the sum of Thirty Thousand and No/100 Dollars ($30,000.00) with legal interest from this date until paid, together will all cost to be taxed, for all of which let execution or other apt to process issue.

SO ORDERED AND ADJUDGED on this the 16th day of July, A.D. 1993.

/s/ Michael R. Eubanks
CIRCUIT JUDGE

File Date: July 16, 1993
Joe Herring, Circuit Clerk